

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSEPH A. MARTINEZ, JR.,

Plaintiff,

vs.

No. CIV 24-0079 JB/JFR

ALTA VISTA REGIONAL HOSPITAL;
MARCELINO ROMERO; ERNISTINE
ROMERO; ROGER VALDEZ; and JANE DOE,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion for Request for Waiver of Service, filed February 12, 2025 (Doc. 12) ("Post-Judgment Motion"). Plaintiff Joseph Martinez, Jr. asks for a copy of his initial complaint and for a waiver of service for Defendants Marcelino Romero and Alta Vista Regional Hospital, but he does not provide grounds to reopen the case under rule 60(b) of the Federal Rules of Civil Procedure. Post-Judgment Motion at 1. Having carefully considered the record and applicable law, the Court grants the Motion in part.

BACKGROUND

Martinez commenced this case on January 12, 2024 while incarcerated at the Guadalupe County Correctional Facility in Santa Rosa, New Mexico. See Civil Rights Complaint at 35, filed January 12, 2024 (Doc. 1) ("Complaint"). On April 4, 2024, Martinez filed an Amended Prisoner Civil Rights Complaint. (Doc. 5) ("Amended Complaint"). The Amended Complaint alleges that employees at the Alta Vista Hospital deliberately were indifferent to Martinez' medical needs and engaged in actions that violated his Constitutional rights. See Amended Complaint at 2-4. The Court referred this matter to the Honorable John F. Robbenhaar, United States Magistrate

Judge for the United States District Court for the District of New Mexico, for recommended findings and disposition, and to enter non-dispositive orders. See Order of Reference Relating to Prisoner Cases, filed January 26, 2024 (Doc. 3).

With the Complaint, Martinez filed an Application to Proceed in District Court Without Prepaying Fees or Costs, filed January 24, 2024 (Doc. 2) (“IFP Motion”). By an Order Granting In Forma Pauperis Relief entered August 15, 2024, Magistrate Judge Robbenhaar grants the IFP Motion and assesses pursuant to § 1915(b)(1) an initial payment of \$2.78, (which is twenty percent of the average deposits). See Order Granting IFP at 1-2. Magistrate Judge Robbenhaar set a deadline of September 16, 2024, for Martinez to make the initial partial payment. See Order Granting IFP at 2. The Order Granting IFP warns that the failure timely to comply may result in the dismissal of this action without further notice. See Order Granting IFP at 1-2.

Martinez has not submitted a payment, shown cause for this failure, or otherwise responded to the Order Granting IFP by the September 16, 2024 deadline. Accordingly, by a Memorandum Opinion and Order entered October 22, 2024, the Court dismisses the Amended Complaint without prejudice for failure to prosecute under rule 41(b). See Memorandum Opinion and Order, filed October 22, 2024 (Doc. 8) (“Dismissal MOO”). The Dismissal MOO explains that, if Martinez still seeks relief, he must file a new complaint and address the filing fee in the new case. See Dismissal MOO at 4. The Court entered a Final Judgment on October 22, 2024, along with the Dismissal MOO. See Final Judgment at 1, filed October 22, 2024 (Doc. 9). Martinez filed the Post-Judgment Motion on February 12, 2025.

ANALYSIS

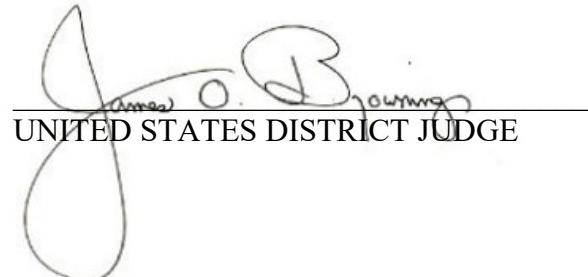
In his Post-Judgment Motion, Martinez asks for a copy of his initial Complaint, and a waiver of service for Defendants Marcelino Romero and Alta Vista Regional Hospital. See Post Judgment Motion at 1. The Court grants Martinez' request for a copy of his Complaint. Because, however, the Court has closed this case and dismissed the case without prejudice, his request for a waiver of service is moot.

To the extent that Martinez seeks reconsideration of the Dismissal MOO, the Court notes that Martinez files the Post-Judgment Motion more than twenty-eight days after the Dismissal MOO and Final Judgment's entry. The Court enters the Final Judgment on October 22, 2024, and Martinez filed the Post-Judgment Motion on February 12, 2025. See Post-Judgment Motion. The Court therefore must analyze the Post-Judgment Motion under rule 60(b) of the Federal Rules of Civil Procedure. See Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991)(noting that motions to reconsider filed within twenty-eight days after the judgment are generally analyzed under rule 59 and that any later motions are analyzed under rule 60). To obtain relief under rule 60(b), the movant typically must show: (i) mistake, inadvertence, surprise, or excusable neglect; (ii) newly discovered evidence; (iii) fraud; or (iv) the judgment is void or has been otherwise satisfied. See Fed. R. Civ. P. 60(b)(1)-(5). Rule 60(b)(6) also contains a catchall clause for “any other reason that justifies relief.” Rule 60(b)(6) relief is, however, “extraordinary,” “difficult to attain,” and only “appropriate . . . when it offends justice to deny such relief.” Zurich North America v. Matrix Serv., Inc., 426 F.3d 1281, 1289, 1293 (10th Cir. 2005).

Having considered the record, the Court concludes that none of these circumstances exist in this case. Martinez does not allege mistake, newly discovered evidence, or fraud, and he does not demonstrate the Final Judgment is void or that the Court should reopen the case based on

extraordinary circumstances. For these reasons, the Court denies relief under rule 60(b). The Court reminds Martinez that, because the Court dismisses without prejudice, he is at liberty to refile his claims in a new lawsuit.

IT IS ORDERED that: (i) the Plaintiff's Motion for Request for Waiver of Service, filed February 12, 2025 (Doc. 12), is granted in part and denied in part; (ii) the Plaintiff's request for a copy of his Complaint is granted; (iii) the Clerk's Office is directed to mail the Plaintiff a copy of his Civil Rights Complaint, filed January 24, 2024 (Doc. 1), and Prisoner's Amended Civil Rights Complaint, filed April 4, 2024 (Doc. 5), to the address on record; and (iv) all other requested relief is denied.



UNITED STATES DISTRICT JUDGE

Plaintiff and Parties:

Joseph A. Martinez, Jr.
Las Vegas, New Mexico

Plaintiff pro se

Alta Vista Regional Hospital

Marcelino Romero

Ernistine Romero

Roger Valdez

Jane Doe

Defendants